

(6) Every person failing to give any notice shall on conviction be liable to a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Subsection (1) of s 160 of the Act imposes a duty on both the sellers and the purchaser to notify the respondent within three months after such sale or transfer, and if they fail to do so, they run the risk of being prosecuted and upon conviction, sentenced under sub-s (6) of that section.

The appellant's learned counsel says that the previous owner should be made liable for the payment of the rates up to the date of sale of the property. The respondent says that the appellant is liable to pay all arrears under the provisions of sub-s (5) of s 160.

I think it is necessary to examine first the provisions of s 146 of the Act which states:

All rates shall be paid by the persons who are the owners of the holdings for the time being, and until so paid shall, subject to the provisions of the National Land Code, be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed.

It is obvious that the person who has to pay the rates is the owner of the property. Under s 133 of the Act, the annual rates are to be paid half yearly in advance by the current owner in January and July of each year. Therefore the words 'owners of the holdings for the time being' in s 146 should be read to mean the owner for the period for which the rates are imposed. That is what appears to be the intention of Parliament. Otherwise great injustice will be caused to the present owner such as in the case of where a local authority has remained inactive and allowed accumulation of arrears of rates for years by a previous owner and then suddenly slapping the present owner with those arrears.

Coming back to sub-s (4) of s 160 of the Act, as far as it concerns this appeal, that subsection means that every seller of such holding shall continue to be liable for the payment of all rates payable in respect of that holding which become payable (by him) as owner of the holding before the notice of such transfer has been given to the local authority, or until the sale or transfer has been recorded in the books of the Municipality. Subsection (5) of s 160 of the Act should be read in consonance with sub-s (4) of that section. It means, that the purchaser of the holding becomes liable to pay the rates the moment the sale is completed, even though the notice of the sale is sent to the local authority on the last day of or beyond the three months allowed under sub-s (1) of s 160. In other words the purchaser cannot be heard to say that his liability runs from the date the notice of sale was sent to the local authority or from the date the transfer of ownership was recorded in the books of the local authority.

A In order to facilitate the local authority to determine the date when the liability of the seller ends and that of the purchaser begins, sub-s (3) of s 160 of the Act gives power to the local authority to require the seller or the purchaser or both of them to produce the relevant document effecting the change of ownership or a certified copy thereof for its inspection.

B The appellant here had paid all the rates liable to be paid by him. In the circumstances, I allow the appeal with costs. I further order the property attached by the respondent to be released to the appellant.

C Learned counsel for the respondent pointed out that sometimes it is difficult to trace the seller to collect the arrears of rates after the sale was completed. I would suggest that the relevant authorities may wish to recommend an amendment to the Act, so that provisions such as those contained in ss 21A and 21B of the Real Property Gains Tax Act 1986 may be inserted into the Act.

D *Appeal allowed.*

Solicitors: *Vadiveloo & Co; Majid, Krishnan, Menon & Lee.*

E Reported by PS Ranjan

F **Hj Abdul Ghani bin Kesah v Tuan Ahmad bin Tuan Man**

HIGH COURT (TEMERLOH) — ORIGINATING MOTION
NO 25-2-90
LAMIN J
10 APRIL 1990

G *Civil Procedure — Subordinate courts — Appeal to High Court — Memorandum of appeal — Record of appeal — Period for filing of memorandum and record — Application for extension of time for filing — Mistake of solicitor — Whether sufficient ground shown — Rules of the High Court 1980, O 55 r 2 — Subordinate Courts Rules 1980, O 49 rr 2, 3 & 3A*

H The appellant filed on 15 January 1990 an application for an order for an extension of time to file the memorandum of appeal and an order to validate the filing of both the memorandum of appeal and the appeal record which was effected on 27 October 1989. The appellant had filed a notice of appeal in respect of a decision of a magistrate. On Friday 22 September 1989, the appellant's solicitors were served with a notice in Form 141 of the Subordinate Courts Rules 1980 that the notes of evidence and the grounds of decision were ready. On 25 September 1989, the solicitors wrote to the appellant asking him to pay to the court the sum of \$250 as security for the costs of the appeal and the sum of \$65 for the notes of evidence. The appellant paid his solicitors the money only on 5 October 1989 and it was paid to the court the same day. The appellant said that he could not have paid the money earlier because he did not receive his solicitors' letter as

he was away from his home on business. The notes of evidence and the grounds of judgment were delivered to the solicitors on 11 October 1989. It was contended for the appellant that he had six weeks from the date on which he was served with the notice in Form 141 to file the memorandum of appeal.

Held, dismissing the application:

(1) By O 55 r 2(1) of the Rules of the High Court 1980, the memorandum of appeal must be filed within 14 days of service on the appellant's solicitors of the notice in Form 141.

(2) By O 49 r 3A(3) of the Subordinate Courts Rules 1980, within six weeks from the receipt of the notification that the notes of evidence and the grounds of judgment are ready, the appellant is to file two copies of the appeal record in the High Court. Upon receipt of the notification, the appellant will have 14 days within which to approach the court for the notes of evidence and to file the memorandum of appeal.

(3) In the instant case, the memorandum of appeal was filed 21 days out of time. The appellant must show sufficient ground when applying for an extension of time. There was no good reason why the appellant's solicitors had to wait for the appellant to appear before the money could be paid to the court. The appellant did not give a more detailed explanation as to the nature of his business and how long he had to be away from home. The mistake of his solicitors was no excuse. There was further delay in making the application. The appellant had not shown sufficient ground to merit the granting of the application. Substantially, in effect, the delay was all due to the mistake of his solicitors.

[Editorial Note: The appellant has appealed to the Supreme Court vide Civil Appeal No 02-211-90.]

Cases referred to

- 1 *Kuching Pharmacy Sdn Bhd v J L Morison Son & Jones (M) Sdn Bhd* [1990] 2 MLJ 170 (not folld)
- 2 *Gan Hay Chong v Siow Kian Yuh* [1975] 2 MLJ 129 (folld)

Legislation referred to

Rules of the High Court 1980 O 55 r 2(1)
Subordinate Courts Rules 1980 O 49 rr 2, 3, 3A

Francis Tan Jeng Lok for the appellant.
Anthony M Sebastian for the respondent.

Cur Adv Vult

Lamin J: This is an application by the appellant/applicant for an extension of time to file his memorandum of appeal and also for an order to validate the filing of both his memorandum of appeal and the appeal record which was done on 27 October 1989. The appellant/applicant is a defendant in Temerloh Magistrate's Court Civil Action No 82-163-1987 and being dissatisfied with the decision of the learned magistrate he has therefore filed his notice of appeal. On 22 September 1989, the solicitors for the appellant/applicant were served with a notice in Form 141 that the notes of evidence and grounds of decision were ready. The said solicitors paid the fees as required by the notice on 5 October 1989 and on 11 October 1989, the court below supplied them with the notes of evidence and the grounds of decision. On 27 October 1989, they then filed the appeal record and the memorandum of appeal.

A Now counsel for the appellant/applicant submitted that he had six weeks from the date he was served with the notice in Form 141 to file his memorandum of appeal as allowed by sub-r (3) of r 3A of O 49 of the Subordinate Courts Rules 1980 ('the SCR'). In support of his contention, he cited the decision of Haidar J in the case of *Kuching Pharmacy Sdn Bhd v J L Morison Son & Jones (M) Sdn Bhd*.¹ So the time for filing his memorandum of appeal would expire on 3 November 1989. His present application is to ask for an extension of 22 days, ie until 28 October 1989 in order to cover the date when he filed both the memorandum of appeal and the appeal record.

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C Rule 3A of O 49 of the SCR was inserted in 1987 to provide for a situation where the appellant is represented by a solicitor. Simultaneously, r 3 was amended specifically for the benefit of an appellant who is not represented by a solicitor. Before the appearance of r 3A, an appellant whether represented by a solicitor or not was given 14 days from the date of service of Form 141 to file his memorandum of appeal. This is provided for under O 55 r 2(1) of the Rules of the High Court 1980 ('the RHC') which makes direct reference to sub-r (2) of r 3 of O 49 of the SCR. When r 3 of O 49 was amended and r 3A inserted, r 2(1) of O 55 of RHC remained unamended to this day so that it is silent on r 3A. However, to resolve the 'oversight', the learned Mr Justice Haidar in the case cited above said at p 172:

In the light of the above cases it seems to me a sensible interpretation can well be put upon O 55 r 2(1) of RHC. The said provision can be interpreted, so as to do justice, by inserting the words 'or within six weeks from the receipt of the notification referred to in O 49 r 3A sub-r 3 of the Subordinate Courts Rules 1980, as the case may be', after the words 'O 49 r 3 sub-r (2)' in O 59 r 2(1) of RHC.

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F This gives rise to a situation that on the one hand an unrepresented appellant, be he educated or uneducated, literate or illiterate, is given 14 days from the date he is served with the notice in Form 141 (to inform that the appeal record is ready which includes notes of evidence and grounds of judgment) to file his memorandum of appeal while on the other, an appellant who is represented and therefore has the benefit of the wisdom and experience of a person learned in law is given a longer time (six weeks) to file his memorandum of appeal.

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I It is agreed that with the introduction of r 3A to O 49 upon the filing of the notice of appeal the unrepresented appellant enjoys the services of the subordinate court appealed from in the way of having the requisite number of copies of the appeal record prepared for him by the court which includes the notes of evidence and the grounds of judgment which are essential for the preparation of the memorandum of appeal. For the appellant represented by counsel, the preparation of the appeal record becomes now the responsibility of his counsel. His counsel will prepare it in 'the requisite number of copies' which must

include the notes of evidence and the grounds of judgment (r 3A(1)). Once ready, two copies of it must be filed in the High Court 'within six weeks of the receipt of the notification from the court appealed from that the certified copies of the notes of evidence and the grounds of judgment are ready' (sub-r (3) of r 3A). In effect, sub-r (3) of r 3A stipulates that an appellant represented by counsel has six weeks to prepare the appeal record and to file it and the time was from the date he is served with the notice that certified copies of the notes of evidence and the grounds of judgment are ready. It is quite clear that the six-week period is given to counsel of the appellant for the purpose of getting the certified copies of the notes of evidence and the grounds of judgment from the court appealed from and to prepare the appeal record which must contain those notes of evidence and the grounds of judgment and then to file two copies of them at the High Court. *It does not say that the six-week period is for the purpose of filing the memorandum of appeal.*

Now r 2(1) of O 55 of RHC 1980 states:

The appellant shall, within fourteen days from the date of service on him of the notice referred to in Order 49, rule 3 sub-rule (2) of the Subordinate Courts Rules, 1980 or within such extended time as the High Court may allow, file in the High Court in duplicate a memorandum of appeal in Form 113A.

As the above rule has not been amended, and this is the only rule that specifically governs the subject matter of filing a memorandum of appeal, with respect, I think the 14-day rule is still intended to be applied to an appellant who is represented by a solicitor or counsel.

Before the introduction of r 3A, it was the court appealed from that had to prepare the appeal record whether the appellant was represented by counsel or not and the court would only prepare the appeal record, after he had complied with r 2 of O 49. Rule 3(1) of O 49 reads:

When the appellant has complied with requirements of rule 2 of this Order and the appellant is not represented by a solicitor ... the court appealed from shall prepare...

Now, what does r 2 of O 49 say? First, a notice of appeal must be in Form 140 (sub-r (1)). It must be filed 'within 14 days from the day on which the decision was pronounced' (sub-r (3)). The court appealed from shall thereupon supply to the appellant, upon payment of the fees, a certified copy of the judgment or of the grounds of decision (sub-r (3)). As soon as the certified copy of the judgment or grounds of decision is ready, the court will notify the appellant (sub-r (4)). Within 14 days from the receipt of this notification that the certified copy of the judgment or grounds of decision is ready, the appellant must (a) deposit a sum of money sufficient to cover the cost of preparing sufficient number of copies of the appeal record and (b) lodge in the court appealed from a sum of \$250 (or such lesser sum as the court may direct) as security for the cost of the appeal (sub-r (5)). The notice

A of appeal must also be served on parties affected by the appeal or their solicitors (sub-r (6)).

B Having paid the deposit to cover the cost of preparing the appeal record and security for the cost of the appeal, only then will the court appealed from prepare the appeal record which will contain the notes of evidence and the grounds of judgment. When the record is ready, a notice in Form 141 is issued. Within 14 days from the date of receipt or service of the notice in Form 141 (or within such extended time the High Court may allow), the unrepresented appellant must file his memorandum of appeal.

C An appellant who is represented by a solicitor must also comply with r 2 of O 49 as required by r 3A(1) which reads:

When the appellant who is represented by a solicitor has complied with the requirements of rule 2 of this Order, the appellant shall prepare...

D He is in the same position as an unrepresented appellant. After filing his notice of appeal, the court appealed from shall, *upon payment of the fees*, supply him a certified copy of the judgment or of the grounds of decision (sub-r (3)). As soon as the certified copy of the judgment or grounds of decision is ready, the court will notify the appellant (sub-r (4)). Within 14 days from the receipt of the notification that the certified copy of the judgment or grounds of decision is ready, he must lodge in the court appealed from a sum of \$250 as security for the cost of the appeal (sub-r (5)). (He does not have to deposit any money to cover the costs of preparing the appeal record because the preparation is done by his solicitor.) Sub-rule (3) of r 3A provides that within six weeks from the receipt of the notification that the notes of evidence and the grounds of judgment are ready, the appellant is to file two copies of the appeal record in the High Court. Of course, only after having obtained the notes of evidence and the grounds of judgment will the appellant's solicitor prepare the appeal record. (The notification mentioned in sub-r (3) of r 3A is not the same as the notice in Form 141. For the purpose of the notification in the said sub-r (3), the respective subordinate courts must devise their own format.) He is equally entitled to the 14-day grace as provided by sub-r (5) of r 2 within which to pay by way of security for the costs of the appeal if he is still interested to proceed with the appeal. The 14-day period was from the receipt of the notification under sub-r (4) of r 2 informing the appellant that the grounds of decision are ready.

I At this point it is interesting to note that the notification that is required to be issued under sub-r (4) of r 2 of O 49 is for the purpose of informing the appellant that the certified copy of the 'judgment' or 'grounds of decision' is ready. It concerns only one thing, ie the 'judgment' or 'grounds of decision'. On the other hand, the notification referred to in sub-r (3) of r 3A is to inform the appellant of *two* things, namely, the *notes of evidence* and the *grounds of*

judgment. Obviously the two notifications must issue at different times as they serve different purposes. I think there is a logical explanation to this. With the first notification under sub-r (4) served, the appellant (be he represented by counsel or not) will then approach the court for the judgment or grounds of decision. A study of the written judgment will enable him to decide with confidence whether to proceed with the appeal or not. If he decides to proceed then he will make the necessary payment as required under sub-r (5); thus he is given 14 days to make up his mind. To decide at that early stage, ie upon filing of the notice of appeal whether to proceed or not, only perusal and study of the judgment is necessary and also perhaps that explains why sub-r (3) of r 2 is silent on 'notes of evidence'. For the purpose of drawing up a complete and satisfactory memorandum of appeal so that every conceivable ground is covered, it is necessary to study the grounds of judgment together with the notes of evidence. For the *unrepresented appellant*, he will have sight of the notes of evidence together with the grounds of judgment when he receives the appeal record; thus the notice in Form 141 under sub-r (2) of r 3 is issued to inform the appellant that the appeal record is ready. It is provided that within 14 days (or with such extension as may be allowed) from the service of the said notice, the unrepresented appellant is required to file his memorandum of appeal (r 2(1) of O 55 of RHC 1980). Similarly, for the purpose of filing the memorandum of appeal, an *appellant represented by a solicitor* also needs to have the notes of evidence and the grounds of judgment. (He would have already obtained the grounds of judgment earlier after receiving the notification under sub-r (4) of r 2 when he was given 14 days within which to settle the necessary payments if he decided to proceed with the appeal in which case he would only need to have the notes of evidence.) However he can only have them after the receipt of the notification in regard to the notes of evidence and grounds of judgment as is required under sub-r (3) of r 3A. (Of course the purpose of this notification is to let him know that he is given six weeks to get ready the appeal record and to file it.) As I have said earlier that there is only one solitary provision in the rules that regulates the filing of the memorandum of appeal and that is found in r 2(1) of O 55 of RHC 1980. Now, the thrust of this provision is to lay down the policy of the 14-day rule by which the memorandum of appeal is to be filed. Before the introduction of r 3A, this 14-day rule was made applicable to both the unrepresented appellant and the appellant represented by counsel. This provision has not been amended and there is not a hint anywhere even impliedly that this policy of the 14-day rule is to be abandoned or to operate against an appellant represented with counsel. There is no valid reason for it not to be retained. There is also no valid reason why he must be given more time than an appellant *without* counsel. So I am of the view that upon service of the notification under

A sub-r (3) of rule 3A, he will have 14 days within which he is to approach the court for the notes of evidence and to file his memorandum of appeal. For practical convenience, in the same notification he can be informed of two things, namely, he is given six weeks to file his appeal record and 14 days to file his memorandum of appeal.

B The next question for me to decide is whether on the facts of this application I should grant the extension of time as applied for the purpose of filing his memorandum of appeal. The notice in Form 141 was served on the appellant's counsel on 22 September 1989 (Friday) and the 14-day period within which to file the memorandum of appeal was to expire on 6 October 1989. On 25 September 1989 (Monday), counsel wrote to his client asking him to pay to court the sum of \$315 (as payment of security \$250 and notes of evidence \$65). The appellant only went to see his counsel on 5 October 1989 with the money which was paid to court the same day. The reason given by the appellant for being unable to come earlier with this money was because he did not receive his counsel's letter of 4 October 1989 as his business took him away from home (para 4 of affidavit). The court delivered to counsel the grounds of judgment on 11 October 1989 by which time the period to file the memorandum of appeal had expired.

D The memorandum of appeal was filed on 27 October 1989, thus 21 days had expired. The appellant's counsel was under the impression that he had six weeks from the service of the notice in Form 141 to file his memorandum of appeal. On the authority of *Gan Hay Chong v Siow Kian Yuh*,² the appellant must show sufficient ground when applying for extension of time. Assuming that the procedure adopted in the present case was correct, the appellant was 21 days out of time. There was no good reason why the appellant's counsel must wait for the appellant to appear before the money could be paid into court. Again I would expect the appellant to give a more detailed explanation as to the nature of his business and how long he had to be away from home. Counsel also admitted that he was under the impression that he had six weeks to file his memorandum of appeal. The mistake of counsel is no excuse. Again, why the further delay in making the present application which was filed on 15 January 1990. In the circumstances, I held that the appellant had not shown sufficient ground to merit the granting of this application. Substantially, in effect, it was all due to the mistake of his counsel. I therefore dismissed the application with costs.

Application dismissed.

I Solicitors: *Francis Tan & Co; Radzi & Abdullah.*

Reported by *PS Ranjan*